

BOARD OF APPEALS CASE NO. 5557

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BEFORE THE

APPLICANTS: James & Stephanie Edwards

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ZONING HEARING EXAMINER

REQUEST: Special Development approval and
variance to allow conversion of a residence to
professional offices without access to public sewer

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OF HARFORD COUNTY

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HEARING DATE: October 16, 2006

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ZONING HEARING EXAMINER'S DECISION

The Applicants, James R. Edwards II and Stephanie Edwards, are requesting Special Development approval, pursuant to Section 267-47.1, and a variance, pursuant to Section 267-45(E), of the Harford County Code, to allow conversion of a residence to professional offices without access to public sewer, in the RO District.

The subject parcel is located at 1310 East Churchville Road, Road, Bel Air, Maryland 21014, in the Third Election District, and is more particularly identified on Tax Map 41, Grid 422, Parcel 422. The property contains approximately 0.45 acres.

The Applicant, James R. Edwards II, appeared and testified that he is an auctioneer with J. Edwards & Associates. He and his wife, the Co-Applicant, Stephanie Edwards, own the subject property, which they purchased in March of 2006. The witness described the parcel as approximately .04 acre, and indicated that it contains a 3 bedroom, 2 bathroom brick rancher with an unimproved lower level. The property is also improved by a paved driveway and parking area found at the rear of the dwelling. Mr. Edwards introduced a landscaping plan of the subject property, which shows mature trees and shrubbery in the front yard and along the western property line. There are presently no trees on the north or east side of the property, however the landscape plan proposes a row of white pines be planted along both those property lines.

According to the witness, the subject parcel is the fourth property from the corner of Moors Mill Road and MD Route 22, just east of the Town of Bel Air. The three intervening properties have all been converted to commercial uses, as have numerous other properties along the same side of MD Route 22. Mr. Edwards testified that several other surrounding properties have also been converted or developed for office use, including a moving company, and lawyer's and dentist's offices to the east along MD Route 22.

The Applicants propose to locate the business offices of their auctioneer service in the existing dwelling on the subject property. They will utilize the site for onsite auctions and appraisals. Mr. Edwards testified that his normal working hours begin at 7:30 - 8:30 a.m, and that his two employees generally work from 9:00 a.m to 5:00 p.m, Monday thru Friday. They also occasionally start from the office to travel to auction sites on Saturdays.

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Mr. Edwards stated that the subject property is currently served by private well and septic. Public water is available, but public sewer is not. The Applicants are prepared to connect to public water if the request is approved. Public sewer is now located to the west of the subject site, at the Freedom Federal Credit property. However, in order to gain access to that sewer line, the Applicants would have to cross a neighboring property whose owner is unwilling to grant an easement for them to do so. Public sewer is also available on the opposite side of MD Route 22. However, to connect from that location would be both impractical and cost prohibitive, as the Applicants would need to bore under MD Route 22 to install a small line with an ejector pump. According to the witness, the County is not in favor of this option. In fact, Staff Report Attachment 14, contains a letter from the Harford County Department of Public Works, Division of Water and Sewer recommending that the owner of the subject property connect to public sewer when it becomes available, and that the determination of availability be at the discretion of the Department of Public Works or the Health Department. The Applicant stated that he agrees with Staff Report Condition Number Three, which would require him to connect to public sewer when it becomes available. According to Mr. Edwards, the Harford County Health Department has approved his proposal to utilize the on site septic system. He also stated that the existing septic tank has been inspected by Hall's Septic Services, Inc. which found the system to be in proper working order. (*Report introduced Applicant's Exhibit No. 13*).

Finally, Mr. Edwards, indicated that no external modifications of the existing dwelling are proposed. A landscaping plan will be submitted as part of the detailed site plan reviewed and approved through the Development Advisory Committee. In his opinion, the proposed application will cause no adverse impact on adjoining properties.

The second witness to testify for the Applicants was Mr. Douglas Kopeck, a landscape architect, and Vice President of CNA, Inc. Mr. Kopeck testified that the subject proposal is consistent with the Harford County Master Plan.

Mr. Kopeck concurred with the Applicant's description of the property, and also indicated that the rear of the property has a good buffer area which appears to contain a reforestation area. Further, the grade drops as you enter the site, making it very difficult to see into the property. The witness verified that there are no proposed changes to the exterior of the existing structure. The only proposed changes will be to the rear parking area. Additionally, he testified that the proposed use meets all design and impervious surfaces requirements set forth in the Harford County Code.

Mr. Kopeck stated that his company, CNA, Inc, had designed the landscape plan introduced by Mr. Edwards. The plan proposes installing a row of white pines along the eastern property line and adjacent to the rear privacy fence. No outside lighting is proposed, and there are no plans to remove any existing mature trees. According to the witness, access to the property will be from Churchville Road (MD Route 22). An access plan is not required, as the existing entrance is currently wide enough. However the driveway will need to be widened from 14 feet to 20 feet in order to accommodate two-way traffic.

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The witness confirmed Mr. Edwards earlier testimony regarding possible options for connecting to existing public sewer lines. The first option would involve boring under MD Route 22 to install a small diameter pressure line to serve only the subject property. However, he opined that extending a small pressure line under a four lane road to serve a single office building would be both impractical, and cost prohibitive. The second choice would be to extend the existing sewer lines from the Freedom Credit parcel to the subject site. However, this option is currently not possible because the intervening property owners will not grant right-of-way easements. The County has no plans to extend public sewer to the subject property at this time. Therefore, for practical purposes, public sewer is currently unavailable. Mr. Kopeck also stated that in his opinion, the unavailability of public sewer makes the subject property unique, and creates practical difficulty and hardship for the Applicants. Finally, the witness testified that he had considered the Standards Guides and Limitations set forth in Harford County Code Section 267-9I, and that none of those standards indicate that the proposed use should be denied.

Mr. Anthony McClune, Deputy Director of the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. He indicated that the Department had reviewed the Application and Attachments, visited the site and surrounding area, and prepared photographs and submitted an aerial photograph in connection with its investigation. The Department recommended approval of the Application in its October 2, 2006 Staff Report subject to four proposed conditions set forth therein.

Mr. McClune testified that the Applicants can meet or exceed all standards set forth in Harford County Code Section 267.47.1. He further testified that the Department had considered the provisions set forth in Section 267-9I in connection with the subject request, and determined that the proposed use meets all criteria set forth therein. According to the witness, the subject property is located on MD Route 22 which is an arterial road. Other RO zoned dwellings in the area are slowly being converted to commercial uses.

In discussing the requirements of Code Section 267-45(E), that the property be served by both public water and sewer, Mr. McClune stated that the Department of Public Works, had indicated it would be impractical for the Applicants to run a pressure operated sewer line under MD Route 22. He also stated that the most desirable way to serve the subject property would be to eventually hook in through a gravity line running along the north side of MD Route 22 from the west side of the subject property.

With regard to the Applicants proposed landscape plan, Mr. McClune indicated that it is generally acceptable to the Department, but that if outdoor lighting is added in the future, it will need to be addressed by that plan. Finally, he testified that although site distance at the access point is adequate, the access drive itself will need to be widened to accommodate two-way traffic. He noted that the State Highway Administration will be required to issue the actual permit, and indicted that photographs attached to the Staff Report as Attachments 8A-D show some of the site distances along MD Route 22

No testimony or evidence was presented in opposition to the subject application.

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Applicable Law And Findings of Fact:

The Applicants own an approximately one-half acre, improved parcel located on the north side of Churchville Road (MD Route 22) approximately 630 feet east of Moors Mill Road. The parcel is located in an RO zoned area, which is changing from a primarily residential to primarily commercial region.

The Applicants property is improved by a single family ranch home with a paved driveway and rear parking area. They are requesting Special Development approval, pursuant to Section 267-47.1, and a variance, pursuant to Section 267-45(E), of the Harford County Code, to allow conversion of the residence to professional offices without access to public sewer, in the RO District. The proposed use of the property is consistent with other commercial uses in the area.

The relevant provisions of the Harford County Code (*in italics*) with regard to Special Development approval, and the Hearing Examiner's findings regarding those provisions are set forth below:

Section 267-47.1, which governs retail and service uses in the RO District states as follows:

- A. *Purpose. To provide opportunities for conversion of existing residential structures of the development of new structures for retail, service and office uses in predominantly residential areas. The purpose of these development standards are to ensure that the structures and uses developed are compatible and in harmony with the neighboring residential communities.*
- B. *Development standards.*
 - (1) *Design. An architectural rendering of the building facade and elevation of the structure shall be submitted to the Board. The rendering shall demonstrate how the project meets the following standards and objectives:*
 - (a) *Redevelopment of existing residential structures. Redevelopment of existing residential structures shall be permitted provided that any physical modification is compatible and in harmony with the neighboring residential communities relative to architectural design, scale, building height and materials used in construction.*

The Applicants are not proposing any external modification of the existing dwelling. The only proposed changes will be to the parking area at the rear of the dwelling.

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- (b) *Development of new buildings. New buildings developed for retail, service and office uses shall be designed to be compatible and in harmony with the neighboring residential communities relative to architectural design, scale building height and the materials used in construction. Elements to be considered in determining compatibility with neighboring residential communities shall include massing and building materials as well as cornice lines, window lines, roof pitch and entry.*

The Applicants are not proposing to develop any new buildings.

- (c) *Design requirements. See Design Table VIIA.*

All required setbacks and design standards are met by the existing dwelling.

- (2) *Maximum building coverage. The maximum building coverage shall be 40% of the lot, and the maximum impervious surface shall be 65% of the lot.*

The Applicants meet all requirements set forth in this section.

- (3) *Use limitations. The uses permitted under this section shall comply with the following:*
 - (a) *Enclosed building. All uses permitted shall be conducted within an enclosed building, except parking, loading, unloading or as otherwise permitted.*

All uses will be conducted within the professional office building.

- (b) *Storage restriction. The outside storage of material or equipment shall not be permitted.*

There is no outside storage proposed, and an appropriate condition will be added to this decision insure compliance with this requirement.

- (c) *Screening requirements. Parking, loading, unloading or other outdoor activity shall be screened from adjacent residential lots. Screening shall consist of landscaping, walls or solid fencing at least 6 feet high which shall be continuous to prevent visibility of the area.*

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The grade drops as you enter the site, making it very difficult to see into the property. The west side of the property contains very large mature trees and the front yard contains large mature trees and shrubbery. The Applicants have no plans to remove any of the existing mature vegetation which provides screening for the site. A six foot high solid board privacy fence runs along the rear of the property providing additional screening. In addition, the rear of the property is buffered by a reforestation area. There are no existing trees on the north or east sides of the property. However, the Applicants have submitted a landscaping plan which proposes to install a row of white pines along the eastern property line and rear privacy fence.

- (d) *Hours of operation. Uses shall only be permitted to operate between the hours of 6:00 a.m. 10:00 p.m., inclusive.*

The Applicants propose to comply with this requirement, and an appropriate condition to insure compliance will be recommended.

- (4) *Landscaping. The landscaping shall, to be extent possible, preserve unique features and mature vegetation, especially large trees. Lawn and landscaped areas shall be maintained to preserve the residential character of the area. Landscaped buffer yards shall be planted in harmony with adjoining residences and in accordance with Section 267-28 of this chapter. A landscaping plan shall be submitted to the Board for review and approval.*

The Applicants' site plan proposes to retain existing mature landscaping and add a row of white pines along the eastern and rear property lines. The Applicants landscaping plan will need to be approved by the Harford County Department of Planning and Zoning. The Hearing Examiner finds that the existing and proposed landscaping will preserve the residential character of the area.

- (5) *Outside lighting. Outside lighting shall be so shaded, shielded, directed or maintained so that the lighting does not cause a glare or reflection on adjacent residential lots.*

No outside lighting is proposed.

- (6) *Ingress and egress. Any ingress or egress to the site shall be designed to provide the safest means of traffic flow.*

The existing entrance is currently adequate, however the driveway will need to be widened from 14 feet to 20 feet to accommodate two way traffic. The design of the entrance onto MD Route 22 (Churchville Road) is subject to State Highway requirements and approval.

Section 267-45 provides general design standards be applied to special development requests:

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The only applicable requirement of Section 267-45, not otherwise met by the Applicant, is sub-section (E) which states:

"The project shall be served by public water supply and public sewerage disposal unless developing under guidelines for the conservation development as in Section 267-46.1."

Harford County Code Section 267-11 permits the granting of variances, stating:

"Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval."

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of *Cromwell v. Ward*, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. *Cromwell, supra*, at 721. If the subject property is found to be unique, the trier of fact may proceed to the second step, and determine whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the Applicant.

The Hearing Examiner finds that the subject property is unique. The property is one of a

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small number of parcels located along MD Route 22 between Moores Mill Road and MD Route 543. Many of these properties have already been converted from residential to commercial/office use. The property is zoned RO, although in order to be utilized for office purposes the Code requires that it be served by both public water and sewer. Public water is available, but for all practical purposes, public sewer is not. The County has no plans to extend public sewer to the site at this time, and sewer lines cannot be extended from the Freedom Federal Credit parcel to the west due to right-of-way issues. Further, while it is technically possible for the Applicants to bore underneath MD Route 22 and install a small diameter pressure line, the Department of Public Works, Sewer Division had indicated that this would not be the preferred method of providing sewer to the subject site. The most desirable way to serve the subject property would be to eventually hook in through a gravity line running along the north side of MD Rt 22, from the west. (*See Staff Report Attachment 12*)

The Hearing Examiner finds that literal enforcement of the zoning ordinance with regard to the unique property would create practical difficulty for the Applicants. Boring underneath MD Route 22, a four lane road, to install a single small diameter pressure line to serve one small office building would be both impractical, and extraordinarily cost prohibitive.

Finally, The Hearing Examiner finds that the granting of the requested variance will not be detrimental to either adjoining properties, or the intent of the Code. The property is zoned RO, and the neighborhood is becoming increasingly commercial in nature. The proposed use is both in harmony with other uses in the vicinity, and in compliance with the Master Plan. In addition, the Hearing Examiner accepts the testimony of both Mr. Kopeck and Mr. McClune that based on the limitations guides and standards set forth in Harford County Code Section 267-9I, the requested variance would not cause any adverse impact to adjoining properties.

Section 267-9I of the Harford County Code (*in italics*) and the Hearing Examiner's findings are set forth below:

- I. *Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:*

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- (1) *The number of persons living or working in the immediate area.*

The area of the subject property is steadily changing from residential to commercial/office use. Therefore, the proposed use will have no adverse impact on persons living or working in the immediate area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The access from the subject property onto MD Route 22 is adequate, and site distances along MD Route 22 are good. There was no evidence introduced to indicate that the proposed use would adversely impact traffic.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposed use is permitted in the RO District, is in compliance with the Master Plan, and is also in harmony with other uses presently found in the area. There was no evidence introduced to indicate any potential adverse fiscal impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such impacts are anticipated as a result of the proposed use.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and Maryland State Police will provide police protection. The Bel Air Volunteer Fire Company will provide fire protection. Public water and an existing onsite private septic system will be utilized. Private trash collection will be arranged by the Applicants.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The request is consistent with generally accepted planning principles and practices.

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- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

The proposal should have no adverse impact on schools and churches in the vicinity of the subject property.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed use is compatible with existing zoning and the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The proposed use will have little or no environmental impact.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Having found that the Applicants met all required elements of proof in connection with the referenced Harford County Code sections referenced above the Hearing Examiner makes the following recommendation.

CONCLUSION & RECOMMENDATION:

The Hearing Examiner recommends approval of the Application subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections for the conversion of the existing structure.
2. The Applicants shall prepare a detailed site plan to be reviewed and approved through the Development Advisory Committee. The site plan shall include a final landscaping plan and lighting plan. The proposed use shall be screened from residential property on the easterly side. Additional landscaping shall be planted along the eastern and rear property lines.

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3. The Applicants shall connect to public sewer when it becomes available. The determination of this requirement shall be at the discretion of the Department of Public Works or the Health Department. If in the future a sewer petition is developed for this area the Applicants shall support the petition.
4. The Applicants shall comply with all Health Department regulations pertaining to the use of an on-site septic system.
5. There shall be no outside storage of material or equipment.
6. The office uses shall be open only between the hours of 6:00 a.m. and 10:00 p.m.

Date: January 3, 2007

Rebecca A. Bryant
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 1, 2007.